

Appeal No: VA19/5/0165

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

Patrick Morrissey t/a Clonmel Hardware & Pets

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No. 880048, Retail (Shops) at 1A Abbey Street, Clonmel, County Tipperary.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF JUNE 2023

BEFORE

Hugh Markey FRICS FSCSI

Deputy Chairperson

1. THE APPEAL

1.1 By Notice of Appeal received on the 1st day of October, 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above relevant Property was fixed in the sum of €24,900.

1.2 The Grounds of Appeal are fully set out in the Notice of Appeal. Briefly stated they are as follows: *“Appellant feels rate is unfair due to the fact that he runs a small shop on a side street & he is being rated the same as the shops on main street.”*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €13,000.

2. RE-VALUATION HISTORY

2.1 On the 15th day of March, 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €24,900.

2.3 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €24,900.

2.4 The date by reference to which the value of the Property, the subject of this appeal, was determined is the 15th day of September, 2017.

3. DOCUMENT BASED APPEAL

3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.

3.2 In accordance with the Tribunal's directions, the parties exchanged their respective summaries of evidence and submitted them to the Tribunal.

4. FACTS

4.1 The parties are agreed as to the following facts.

4.2 The subject property is located on Abbey Street, a side street off Mitchell Street, which is the main pedestrianised shopping area in Clonmel. There are 5 shops located on the street.

4.3 The subject property comprises the ground floor of a mid-terrace four storey building. The ground floor comprises retail and storage. The main retail area is separated from the rear retail area by means of a structural wall through which there is an opening. The storage area is located to the rear of the property.

4.4 the following areas have been agreed:

Ground Floor Retail Zone A	57.30 sq.m
Zone B	4.13 sq.m
Rear Retail	48.24 sq.m
Total Retail	109.67 sq.m
Ground Floor Stores	35.67 sq.m

5. ISSUES

The sole issue in this appeal is one of quantum.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

“The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.”

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

“Subject to Section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant.”

7. APPELLANT'S CASE

7.1 A statement setting out the grounds of appeal was submitted by Mr. Darren Carroll of the Appellant company. He cited six reasons to support the appeal. These were:

7.1.1 The NAV rate of €260psm applied to the subject property was 'extremely high based on the location' of the premises; he said they were located on an offshoot of a pedestrianised street which he described as T shaped with the property located 3/4 of the way down the street with the main footfall being across the top of the T. He said there was no off street car parking with no immediate access by vehicle to the property. He said the nearest car parking was 80 metres from the building. He noted that of the 5 retail units on the street, two were vacant; one was in use as an office which is closed most of the working day. He said only one other shop was open daily. The footfall on the street was low with little to draw customers.

7.1.2 The second reason cited was in respect of floor area differences. This appears to have been compromised as per the Respondent's evidence.

7.1.3 Mr. Carroll included comparisons of other shops in the town, in better locations, and suggested that the proposed NAV would give rise to a very significant increase in the rates payable from €1,931 to €4,731. He had expected at the time of revaluation that the rates burden on the premises would fall. His comparisons are set out below:

- i) PN 880046 - He noted that this property is located in the heart of the pedestrianised street, which he suggested is a prime location with 6/7 shops on either side, a far better location. He noted that this shop has an area of 241.68sq. m. and the same NAV as the subject -€24,900.
- ii) PN 882962 -he noted this property is located on the main street in the town, has a loading bay and on street parking right outside. He suggested that it was at least the same size as the subject and has a constant flow of traffic passing daily. He noted the NAV of this property as €20,100. He suggested the turnover of this shop was 25 times that of the subject.
- iii) PN 880003- he said this property is located on the main street also. He said it was the location for many businesses, boutiques and public services including banks and restaurants. It has on street parking, and a total area of 174.62sq.m. and a NAV which is slightly higher than the subject's at €27,000.
- iv) PN 4 883790 – Mr. Carroll said this property is located in the centre of the town, has access to on street car parking and is surrounded by other retail. He said the floor area is 193.62 sq.m and the NAV is €23,900, which is €1,000 less than that of the subject.
- v) PN 882963 - again, this property is located in the Town Centre and has easy access to parking with large volumes of traffic passing daily. He noted that it is surrounded by the main shops in the town. The shop has a total area of 218.16sq.m and the NAV is only slightly higher at €26,400.
- vi) PN 882963 -this is a take away at a crossroads and why it is not in the centre of the town, as a take away it has 'a fantastic' business. He noted the NAV rate of €140psm as opposed to the €260psm applied to the subject.

7.1.4 – The witness noted the condition of the property as being 'not great'. He said the building dates to the 1920s and is badly in need of repair to the walls and ceilings.

7.1.5- The fifth reason cited was the relative rate placed by the Respondent on the property vis a vis those on Mitchell St. and the top of O'Connell St.. He said the proposed NAV equated to a weekly rent of €478. He suggested the property was 'off the beaten track' and the level applied was simply not achievable in the market. In support of his view of a NAV of €13,000,

he included a rental estimate from a firm of local auctioneers which suggested that a rent of €13,000pa would be more realistic.

7.1.6. He introduced evidence of turnover for the business and noted the number of customers per day. He suggested it was a struggle to survive in business with the overheads

7.2 Mr. Carroll contended for a NAV of €13,000.

8. RESPONDENT'S CASE

8.1 Mr. Costello, representing the Respondent, outlined the basis and purpose of the Revaluation. He further outlined the statutory provisions governing revaluations - section 48 of the Valuation act 2001, as amended by the Valuation (Amendment) Act 2015. He noted that in arriving at the net annual value (NAV) the requirements of section 19(5) of the Act are to *'achieve both (insofar as is reasonably practicable) (a) correctness of value and (b) equity and uniformity of value between properties on that valuation list'* as required by section 19(5) of the Act.

8.2 The witness described the property and its location, noting that the street does not have the same footfall as Mitchell St., but does have the advantage of a car park and the tourist attraction of the Abbey at its southern end. He described the footfall in the location as being 'poor in general' with people using the street to access the Abbey as a tourist destination or the car park which is used by workers.

8.3 He noted that the ground floor was divided into retail and storage, was old-fashioned in design and appearance. He said the property was laid out in three sections; the front retail area, the rear section behind a substantial load bearing wall with walk through access via an opening and a storage area accessed from the rear retail area. He noted the property is in poor to fair condition.

8.4 Mr. Costello noted the valuation date as being 15th September 2017.

8.5 The witness outlined how the scheme of valuation had been arrived at; he said lease information was very scarce and difficult to obtain, therefore 'an overview of the entire retail district was considered'. There was a single letting transaction of PN 886302 which, when analysed, gave a zone A rate of €235psm. Details of this letting are included at Appendix 1 to this judgment (n/a to public). This led to the adoption of a rate of €260psm zone A for secondary locations in the town. He said this rate had been applied to the subject property and having considered the fact that the rear area was divided by a supporting wall, applied a rate equivalent to 60% of the zone a rate to this area- €156 psm overall. The store was valued at 10% of the zone a rate i.e. €26 psm.

8.6 He noted that aim of the reevaluation was to value like with like wherever possible. He noted the subject property is valued at a zone a rate of €260 psm, 'because it is in a secondary location'. He noted that five of the six comparisons adduced by the Appellant are on O Connell St., the main retailing area in the town and are all valued at €340psm. He suggested that references to the similarities between the NAV of the subject and the comparisons occurred for

various reasons, depending on the shape and design of the building. He said the sixth comparison is not directly comparable due to its location outside of the town.

8.7 Mr. Costello, as evidence of equity and uniformity, as well as the single letting, introduced 5 NAV comparisons. These are included in Appendix 2 to this judgment (n/a to public). Of these, the three are located on Abbey St., with one each on Parnell and Mitchell St. The first comparable which is located immediately across from the subject was valued by the Respondent on an overall basis at the rate of 60% of the 'scheme' rate of €260psm. This was, he noted, 'due to its layout'. The other comparables were all valued at a rate of €260psm and varied in size from 31.09sq.m 2 96.87sq.m.

8.8 The witness contended for a NAV of €22,100 as set out below

Floor	Use	Area (m2)	NAV € (m2)	Total NAV € (m2)
0	Retail Zone A	57.34	260.00	14908.40
0	Retail Zone B	4.13	130.00	536.90
0	Shop	48.24	156.00	7525.44
0	Store	25.67	26.00	667.42
0	Retail Zone A 10% Allowance			- 1490.00
	Total	134.38		22148.16
			Rounded	€22,100

9. FINDINGS AND CONCLUSIONS

9.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Tipperary County Council.

9.2 This appeal is a perfect illustration of a situation where the use of zoning can result in an inappropriate rental valuation. Zoning of retail units is a tool of analysis whereby a zone A rate is derived from a consideration of a letting or lettings of similar circumstanced units. In itself, it is not a method of valuation. The blanket application of a zone A rate can lead to misleading and incorrect rental valuations. This is particularly so when a retail unit does not have a

minimum of 3 zones. The basic principle is that 100% of turnover will be generated in the first 6.1 metres of the shop with this reducing by 50% in each successive zone. It is important for the valuer to also consider the rental valuation of retail units on an overall basis. In the instant case, zone B is only 4.13sq.m, which represents just 0.7% of the zone A area. There are no further zones. It is informative that the Respondent valued his NAV Comparison 1 (opposite the subject property) on an overall basis at the rate of 60% of the prevailing zone A rate of €260psm. He noted this is due to its layout but no further information was made available by way of explanation.

9.3 The blanket application of a zone A rate can result in uniformity but, when applied in such a manner as in the instant case, it can lead to inequity and therefore may not satisfy the requirements of the Act.

9.4 The Tribunal believes that the correct approach to adopt in valuing the subject property is on a similar basis to the Respondent's NAV Comparison 1 PN 878405 - that is on an overall basis at a rate which is similarly 60% of the 'scheme' rate. It is appropriate to adopt a rate of 50% to the rear retail area which is separated from the front retail area by a structural wall and a rate of 10% of the 'scheme' zone A rate to apply to the stores..

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property, as stated in the valuation certificate, to €14,250.

Level	Use	Area sq. m.	Rate per/sq. m.	
0 Front	Retail	61.43	€156.00	€9,583.08
0 Rear	Retail	48.24	€78.00	€3,762.72
0	Stores	35.67	€26.00	<u>€927.42</u>
Total				€14,273.22

Say NAV €14,250

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.